

H. B. 2452

(By Delegates Marshall, Guthrie, Barill,
D. Poling, Fragale and Moore)

[Introduced February 14, 2013; referred to the
Committee on the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §48-10A-101,
§48-10A-102, §48-10A-201, §48-10A-202, §48-10A-203,
§48-10A-301, §48-10A-401, §48-10A-402, §48-10A-501,
§48-10A-502, §48-10A-601, §48-10A-602, §48-10A-701,
§48-10A-801, §48-10A-802, §48-10A-901, §48-10A-902,
§48-10A-1001, §48-10A-1002, §48-10A-1101 and §48-10A-1201, all
relating to extended family visitation generally; setting
forth legislative findings and intent; certain terms defined;
persons who may apply for extended family visitation; petition
for extended family visitation, appointment of guardian ad
litem for the child; necessary findings for grant of
reasonable visitation to an extended family member; factors to
be considered in making a determination as to a grant of
visitation to an extended family member; interview of child in
chambers; prohibitions on use of child's written or recorded

1 statement or affidavit; proof required generally and in cases
 2 of domestic violence; order granting or refusing extended
 3 family visitation must state findings of fact and conclusions
 4 of law; supervised visitation; conditions on visitation;
 5 effect of remarriage of the custodial parent; effect of
 6 adoption of the child; continuing jurisdiction of circuit
 7 court and family court; termination of extended family
 8 visitation; attorney's fees and costs; and misdemeanor
 9 offense for allowing contact between child and person who has
 10 been precluded visitation rights, and penalties upon
 11 conviction for offense.

12 *Be it enacted by the Legislature of West Virginia:*

13 That the Code of West Virginia, 1931, as amended, be amended
 14 by adding thereto a new article, designated §48-10A-101,
 15 §48-10A-102, §48-10A-201, §48-10A-202, §48-10A-203, §48-10A-301,
 16 §48-10A-401, §48-10A-402, §48-10A-501, §48-10A-502, §48-10A-601,
 17 §48-10A-602, §48-10A-701, §48-10A-801, §48-10A-802, §48-10A-901,
 18 §48-10A-902, §48-10A-1001, §48-10A-1002, §48-10A-1101 and
 19 §48-10A-1201, all to read as follows:

20 **ARTICLE 10A. EXTENDED FAMILY VISITATION.**

21 **PART 1. GENERAL PROVISIONS.**

22 **§48-10A-101. Legislative findings.**

23 The Legislature finds that circumstances arise where it is
 24 appropriate for circuit courts or family courts of this state to

1 order that extended family of minor children may exercise
2 visitation with children who are part of the extended family. The
3 Legislature further finds that in such situations, as in all
4 situations involving children, the best interest of the child or
5 children is the paramount consideration.

6 **§48-10A-102. Legislative intent.**

7 It is the express intent of the Legislature that the
8 provisions for extended family visitation that are set forth in
9 this article are to be applied to allow extended family of a
10 natural parent that is deceased to have visitation with the
11 deceased natural parent's children when a petition for grandparent
12 visitation has been denied, the grandparents have failed to
13 exercise grandparent visitation rights as provided in article ten
14 of this chapter, or the grandparent visitation has ceased because
15 of death or incapacity.

16 **PART 2. DEFINITIONS.**

17 **§48-10A-201. Applicability of definitions.**

18 For the purposes of this article the words or terms defined in
19 this article, and any variation of those words or terms required by
20 the context, have the meanings ascribed to them in this article.
21 These definitions are applicable unless a different meaning clearly
22 appears from the context.

23 **§48-10A-202. Child defined.**

24 "Child" means a person or persons under the age of eighteen

1 years who has not been married or otherwise emancipated.

2 **§48-10A-203. Extended Family defined.**

3 "Extended Family" means persons who have the following
4 relationships to a deceased natural parent:

5 (1) Brother or sister;

6 (2) Foster brother or sister with whom the natural parent
7 resided with and developed a sibling relationship with; or

8 (3) The child of a brother, sister, foster brother or sister
9 with whom the natural parent resided with and developed a sibling
10 relationship with.

11 PART 3. APPLICATION TO THE CIRCUIT COURT OR FAMILY COURT FOR
12 EXTENDED FAMILY VISITATION.

13 **§48-10A-301. Persons who may apply for extended family**
14 **visitation; venue.**

15 An extended family member of a child residing in this state
16 may, by petition, make application to the circuit court or family
17 court of the county in which that child resides for an order
18 granting visitation.

19 PART 4. PROCEEDINGS FOR VISITATION FOR EXTENDED FAMILY.

20 **§48-10A-401. Petition for extended family visitation.**

21 (a) The provisions of this section apply when a petition for
22 grandparent visitation has been denied, the grandparents have
23 failed, refused or are unable to petition for grandparent

1 visitation pursuant to article ten of this chapter, or to exercise
2 grandparent visitation rights previously granted by a court, or
3 grandparent visitation has ceased because of death or incapacity.

4 (b) An extended family member may petition the circuit court
5 or family court for an order granting visitation with the child or
6 children of a deceased natural parent if an order granting extended
7 family visitation has not been issued.

8 (c) When a petition under this section is filed, the matter
9 shall be styled "In re extended family visitation of
10 [petitioner's(s') name(s)]". The petition shall be served on all
11 individuals defined in this article as extended family to provide
12 an opportunity to participate in the proceeding.

13 (d) Petitions for extended family visitation shall be filed
14 and heard in the family court except when an abuse or neglect
15 proceeding involving the child or children is pending before the
16 circuit court, in which case the motion or petition shall be filed
17 and heard in the circuit court.

18 **§48-10A-402. Appointment of guardian ad litem for the child.**

19 When a petition is filed seeking extended family visitation,
20 the court, on its own motion or upon the motion of a party, may
21 appoint a guardian ad litem for the child to assist the court in
22 determining the best interests of the child regarding extended
23 family visitation.

24 PART 5. FACTORS AFFECTING A DECISION TO GRANT VISITATION FOR

1 EXTENDED FAMILY.

2 **§48-10A-501. Necessary findings for grant of reasonable extended**
3 **family visitation.**

4 The circuit court or family court shall grant reasonable
5 extended family visitation upon a finding that visitation would be
6 in the best interest of the child and would not substantially
7 interfere with the parent-child relationship. However, in the case
8 where the natural parent died as a result of domestic violence
9 committed by a family or household member as defined in section two
10 hundred four, article twenty-seven of this chapter, the extended
11 family shall be entitled to visitation unless it is proven by clear
12 and convincing evidence that an award of extended family visitation
13 is contrary to the best interest and welfare of the child.

14 **§48-10A-502. Factors to be considered in making a determination**
15 **as to a grant of extended family visitation.**

16 In making a determination on a petition the court shall
17 consider the factors set forth in section five hundred two, article
18 ten of this chapter to the extent that the factors do not conflict
19 with the provisions of this article.

20 PART 6. INTERVIEW OF CHILD BY JUDGE.

21 **§48-10A-601. Interview of child in chambers.**

22 In considering the factors provided in section five hundred
23 two of this article for purposes of determining whether to grant

1 visitation, establishing a specific visitation schedule, and
2 resolve any issues related to the making of any determination with
3 respect to visitation or the establishment of any specific
4 visitation schedule, the court, in its discretion, may interview in
5 chambers any or all involved children regarding their wishes and
6 concerns. No person may be present other than the court, the
7 child, the child's attorney or guardian ad litem, if any, and any
8 necessary court personnel.

9 **§48-10A-602. Prohibitions on use of child's written or recorded**
10 **statement or affidavit; child not to be called as**
11 **a witness.**

12 (a) No person may obtain or attempt to obtain from a child a
13 written or recorded statement or affidavit setting forth the wishes
14 and concerns of the child regarding extended family visitation
15 matters, and the court, in considering the factors provided in
16 section five hundred two of this article for purposes of
17 determining whether to grant any visitation, establishing a
18 visitation schedule, or resolving any issues related to the making
19 of any determination with respect to visitation or the
20 establishment of any specific visitation schedule, may not accept
21 or consider such a written or recorded statement or affidavit.

22 (b) A child may not be called as a witness in any proceeding
23 to determine whether extended family visitation should be awarded.

24 PART 7. PROOF REQUIRED FOR GRANT OF EXTENDED FAMILY VISITATION.

1 **§48-10A-701. Proof required generally and in cases of domestic**
2 **violence.**

3 Extended family visitation shall be granted if a preponderance
4 of the evidence shows that visitation is in the best interest of
5 the child. However, in the case where the natural parent died as
6 a result of domestic violence committed by a family or household
7 member as defined in section two hundred four, article twenty-seven
8 of this chapter, the extended family shall be entitled to
9 visitation unless it is proven by clear and convincing evidence
10 that an award of extended family visitation is contrary to the best
11 interest and welfare of the child.

12 **PART 8. ORDERS GRANTING OR REFUSING EXTENDED FAMILY VISITATION.**

13 **§48-10A-801. Order granting or refusing extended family**
14 **visitation must state findings of fact and**
15 **conclusions of law.**

16 An order granting or refusing a petition for extended family
17 visitation must state in writing the court's findings of fact and
18 conclusions of law.

19 **§48-10A-802. Supervised visitation; conditions on visitation.**

20 In the court's discretion, an order granting extended family
21 visitation may require supervised visitation or may place such
22 conditions on visitation that it finds are in the best interest of
23 the child, including, but not limited to, the following:

1 (1) Allowing an extended family member who did not originally
2 file the petition to participate in visitation;

3 (2) That extended family not attempt to influence any
4 religious beliefs or practices of the children in a manner contrary
5 to the preferences of the child's natural parent who has custody of
6 the child;

7 (3) That extended family not engage in, permit or encourage
8 activities, or expose the child to conditions or circumstances,
9 that are contrary to the preferences of the natural parent who has
10 custody of the child, which has been made known to the extended
11 family in writing; or

12 (4) That the extended family not otherwise act in a manner to
13 contradict or interfere with child-rearing decisions made by the
14 natural parent who has custody of the child.

15 PART 9. EFFECT OF REMARRIAGE OR ADOPTION ON EXTENDED FAMILY
16 VISITATION.

17 **§48-10A-901. Effect of remarriage of the custodial parent.**

18 The remarriage of the custodial parent of a child does not
19 affect the authority of a circuit court or family court to grant
20 reasonable extended family visitation.

21 **§48-10A-902. Effect of adoption of the child.**

22 If a child who is subject to an extended family visitation
23 order under this article is later adopted, the order for extended
24 family visitation is automatically vacated when the order for

1 adoption is entered, unless the adopting parent is a stepparent,
2 grandparent or other relative of the child.

3 PART 10. MODIFICATION OR TERMINATION OF EXTENDED FAMILY VISITATION.

4 **§48-10A-1001. Continuing jurisdiction of circuit court and family**
5 **court.**

6 Any circuit court or family court that grants visitation
7 rights pursuant to this article shall retain jurisdiction
8 throughout the minority of the minor child or children with whom
9 visitation is granted to modify or terminate such rights as
10 dictated by the best interests of the minor child.

11 **§48-10A-1002. Termination of Extended Family Visitation.**

12 A circuit court or family court shall, based upon a petition
13 brought by an interested person, terminated any grant of the right
14 of extended family visitation, or make any modifications thereto,
15 upon presentation of a preponderance of the evidence that an
16 extended family member has materially violated the terms and
17 conditions of the order of visitation. Provided, That in a case
18 where multiple individuals of the extended family are subject to
19 the order, only the individual family member materially violating
20 the terms and conditions of the order of visitation is subject to
21 such action by the court.

22 PART 11. ATTORNEY'S FEES AND COSTS.

23 **§48-10A-1101. Attorney's fees; reasonable costs.**

1 In an action brought under the provisions of this article, a
2 circuit court may order payment of reasonable attorney's fees and
3 costs based upon the equities of the positions asserted by the
4 parties to pay such fees and costs.

5 PART 12. OFFENSES.

6 **§48-10A-1201. Misdemeanor offense for allowing contact between**
7 **child and persons who has been precluded**
8 **visitation rights; penalties.**

9 Any extended family member who knowingly allows contact
10 between a minor child with whom extended visitation has been
11 granted and a person who has been precluded visitation rights with
12 the child by court order is guilty of a misdemeanor and, upon
13 conviction thereof, shall be confined in the county or regional
14 jail not more than thirty days or fined not less than \$100 nor more
15 than \$1,000.

NOTE: The purpose of this bill is to allow extended family members of a child to petition a court for extended visitation rights with the child under certain circumstances.

This article is new; therefore, it has been completely underscored.